IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. ASHOK KUMAR

WRIT PETITION NO.24771 OF 2003
and
WPMP.NO.30455 OF 2003

P. Ramasamy,
Assistant
O/o. The Asst. Commissioner,
(Commercial Taxes) Enforcement,
Tirunelveli. .. Petitioner

Vs.

1. The Special Commissioner &
   Commissioner for Commercial Taxes,
   Chepauk, Chennai 5.

2. The Deputy Commissioner,
   (Commercial Taxes) Enforcement,
   Tirunelveli.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court, Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records pertaining to the order dated 5.6.2003 in O.A.No.997/2003, on the file of Tamil Nadu Administrative Tribunal and the proceedings dated 24.2.2003 of the first respondent and quash the same.

For Petitioner : Mr.S. Vadivelu

For Respondents 1-2 : Mr.S. Gomathinayagam
Special Govt. Pleader

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J U D G M E N T

P.K. MISRA, J

This writ petition has been filed against the common order dated 5.6.2003 passed by the State Administrative Tribunal in 16 separate O.As, including O.A.No.997 of 2003 filed by the present petitioner.

2. The facts giving rise to the present writ petition are as follows :-

The petitioner was working as Upper Division Inspector in the Commercial Taxes Department. A charge memo dated 3.10.2000 was issued against the petitioner alleging that while he was working at Puliyarai Checkpost at Kerala border from the period 10.6.1999 to 20.6.2000, he had failed to make entries in the Movement Register regarding the movement of vehicles carrying bone meals during the period from June, 1999 to January, 2000. Similar charges had been issued against several other officials working at the said Checkpost during the aforesaid period. According to the charge, the delinquent officer was jointly liable to the loss caused along with other officials. In the reply to the charge memo, apart from denying the charges, it was indicated that the vehicles must have taken a diversion route without touching the Checkpost barrier. The Enquiry Officer came to the conclusion that such a large scale of evasion would not have taken place without the actual connivance of the persons in the duty. The plea regarding existence of diversion route was also discarded by the Enquiry Officer. Ultimately, punishment of stoppage of four increments with cumulative effect was directed against the present petitioner.

3. The Original Application filed by the petitioner was taken up with other O.As filed by other persons. The main contention raised before the Tribunal was to the effect that the Department had committed illegality in conducting separate enquiry and in view of Rule 9-A of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, a joint enquiry should have been held against all the concerned officials. It was further contended before the Tribunal that the lorries in question could have entered Kerala through bye-pass route, not passing through the Checkpost barrier, and such explanation should have been accepted by the disciplinary authority. It was also contended that subsequently the Department had collected the tax from the concerned dealers and there was no loss caused to the Department. Further contention was to the effect that the punishment of stoppage of so many increments with cumulative effect or punishment of order of dismissal in some cases was too harsh and should be modified.

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4. It is the last contention which appears to have been found favour with the Tribunal, which modified the punishment to one of stoppage of increments without cumulative effect. So far as other aspects are concerned, the Tribunal found that even though it would have been more desirable if all the delinquents would have been tried in a common enquiry, as a matter of fact, all the delinquents were tried in the enquiries held simultaneously and they have not been able to show any prejudice on account of separate enquiry. The Tribunal also accepted the conclusion of the disciplinary authority that there was no material to indicate that the lorries in question had passed through the bye-pass route. The Tribunal came to the conclusion that even though actually no dishonesty in the shape of payment/acceptance of bribe had been established, such large scale of evasion could not have taken place but for the inefficiency of the entire staff members, which indicated lack of devotion of duty. It is on account of the latter finding that there was no direct proof of any demand or acceptance of illegal gratification, the punishment was modified from one of stoppage of increments without cumulative effect.

5. Learned counsel appearing for the petitioner has vehemently contended that the charges were indeed vague, as no particulars have been given, and therefore, the petitioner has been prejudiced in defending the matter properly. In support of such a conclusion, he has placed reliance upon the decision of the Supreme Court reported in 1995(1)SLR 239 (TRANSPORT COMMISSIONER, MADRAS v. A. RADHA KRISHNA MOORTHY).

6. Even though such a submission appears to be prima facie attractive, on a deeper scrutiny, we are not in a position to accept such submission. It appears that unlike the case considered by the Supreme Court, in the present case, such a plea was not raised earlier either before the disciplinary authority or even before the Tribunal. It is of course true that a contention was raised relating to common enquiry as contemplated under Rule 9-A of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, but no specific contention seems to have been raised regarding the alleged vagueness of the charge. From the materials on record, we find that some particulars have been given, even though possibly more details could have been given along with the charge-memo. However, the absence of specific objection on this score clearly indicates that the petitioner has not been prejudiced. Moreover, in the course of submission, when it was pointed out to the learned counsel for the petitioner that if the charge is found to be vague, the matter could be remanded for fresh enquiry, learned counsel submitted that the petitioner is at the verge of retirement and a de novo enquiry at this stage may be very counter productive so far as the petitioner himself

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is concerned. The learned counsel has also pointed out that in the absence of any specific material as to the time during which such lorries had been passed through, it was not possible to the Department to come to a conclusion about the actual complicity of the petitioner. While making such submission, learned counsel has also indicated that a de novo enquiry may prove to be ultimately counter productive, the punishment may be reduced or modified to stoppage of increment for two years without cumulative effect.

7. The Tribunal while deciding the matters in respect of imposition of punishment by the disciplinary authority, does not sit as an appellate authority. Such a principle, which is applicable to the Tribunal, is equally applicable to the High Court while deciding such matters and more so, while deciding the matters under Article 226 of the Constitution against the decision taken by the Tribunal. Unless the High Court comes to the conclusion that the discretionary order passed by the Tribunal is required to be further toned down, hardly there is any scope for the High Court to reduce the punishment imposed by the Tribunal.

8. Learned counsel for the petitioner has placed reliance upon an order passed by the very same officer of the respondent Department, where the order was stoppage of increment for two years. However, such stoppage of increment for two years with cumulative effect may be more onerous so far as the petitioner is concerned. If the allegations could have been proved in a more definitive manner in the sense that the actual role of the delinquent would have been established, the punishment would have been more severe. Be that as it may, the Tribunal has already interfered with the punishment and such modification has not been challenged by the State Government. In spite of the persuasive efforts made by the learned counsel for the petitioner, we are unable to persuade ourselves to further modify the punishment imposed.

9. The writ petition is accordingly dismissed. No costs. Consequently, WPMP.NO.30455 of 2003 is closed.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   High Court, Chennai 600 104.

+ 1 cc to Mr.S.Vadivelu, Advocate SR No.7065

+ 1 cc to The Government Pleader, High Court, Madras SR No.7049

KC(CO)
SR/23.2.2005

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WP.No.24771/2003

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